APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,624

September Term, 1968.

GARWIN CORPORATION, et al.,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

United States Court of Appeals for the District of Columbia Circuit

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Filed Jan. 28, 1969

ORDER

On consideration of the Board's petition upon remand for an order enforcing its order issued against Garwin Corporation, et al., and of the answer filed with respect thereto by Garwin Corporation, and on consideration of the briefs filed by the parties, it is

ORDERED by the Court that the petition of the National Labor Relations Board to enforce its supplemental order be granted.

Pursuant to Rule 19 of the Federal Rules of Appellate Procedure; counsel for the Board within 14 days from the date of this order shall serve upon the respondent Garwin Corporation, et al., and file with the Clerk a proposed judgment enforcing the supplemental order of the Board. (By Feb. 11th)

Per Curiam.

(TITLE OMITTED)
Filed Feb. 28, 1969

JUDGMENT

Before: Bastian, Senior Circuit Judge; Burger and McGowan, Circuit Judges, in Chambers.

The above cause came upon to be heard upon the Board's petition upon remand for an order enforcing its order issued against Garwin Corporation, *et al.*, and of the answer filed with respect thereto by Garwin Corporation. After consideration of the briefs filed in this cause, the Court on January 28, 1969, being fully advised in the premises, issued an order granting enforcement of the Board's supplemental order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the District of Columbia Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that Garwin Corporation, *et al*, their officers, agents, successors, and assigns, abide and perform the directions of the Board in said order contained.

(Signature illegible)

Senior Circuit Judge, United States Court of Appeals for the District of Columbia Circuit

(Signature illegible)

Circuit Judge, United States Court of Appeals for the District of Columbia Circuit

(Signature illegible)

Circuit Judge, United States Court of Appeals for the District of Columbia Circuit

APPENDIX B

The relevant provision of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et seq.), is as follows:

> "Sec. 10(c) * * * If upon the preponderance of the testimony taken the Board shall be of the oipnion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action * * * * as will effectuate the policies of this Act. * * *."

APPENDIX C

(TITLE OMITTED)

Case No. 29-CA-45
(formerly 2-CA-9791)

ORDER CORRECTING SUPPLEMENTAL DECISION AND ORDER

On February 21, 1968, the National Labor Relations Board issued a Supplemental Decision and Order[1] in the above-entitled proceeding in which there were inadvertent omissions from the Notice to All Employees, attached thereto as Appendix.

IT IS HEREBY ORDERED that the Supplemental Decision and Order be, and it hereby is, corrected as follows:

1. By inserting the following paragraphs between the second and third paragraphs on page ii of the Notice to All Employees:

> WE WILL, upon request made within 1 year of the issuance of the National Labor Relations Board's Supplemental Decision, immediately supply the International Ladies' Garment Workers' Union a list of the names and addresses of all employees at our Miami, Florida, plant, and keep that list current for a 1-year period.

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[1] 169 NLRB No. 154.

WE WILL, upon request immediately grant the International Ladies' Garment Workers' Union and its representatives reasonable access, for a 1-year period, to plant bulletin boards and all places where notices to employees are customarily posted at our Miami, Florida, plant.

WE WILL permit employees at our Florida plant to have unrestricted access to union organizers during nonworking time on plant approaches and parking lots for a period of 1 year from the issuance date of the Board's Supplemental Decision, subject only to such reasonable and nondiscriminatory regulations as we may find it necessary to impose in the interest of plant efficiency and discipline, provided, however, that said regulations do not serve to thwart the employees in the exercise of the right guaranteed them.

2. By striking the last three lines of the Notice to All Employees, and substituting therefor the following:

If the employees have any questions concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office 29, 16 Court Street, 4th Floor, Brooklyn, New York 11201 (Tel. No. 596-3535); or its Regional Office 12, Room 706, Federal Office Building, 500 Zack Street, Tampa, Florida 33602 (Tel. No. 228-7711).

IT IS FURTHER ORDERED that the Supplemental Decision and Order, as printed, shall appear as hereby corrected.

Dated, Washington, D. C., March 5, 1968.
By direction of the Board:

GEORGE A. LEET
Associate Executive Secretary

APPENDIX C-1

(TITLE OMITTED)

Case No. 29-CA-45

(formerly 2-CA-9791)

SUPPLEMENTAL DECISION AND ORDER

On June 28, 1965, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,[1] finding, *inter alia*, that Respondents violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, by closing their plant in New York City, discharging their employees, and moving their operations to Miami, Florida, for the purpose of depriving employees of rights guaranteed by Section 7 of the Act and to avoid bargaining with the Union. Thereafter, the Board filed a petition with the United States Court of Appeals for the District of Columbia for enforcement of its Order. The Court, while enforcing the Board's Order in all other respects, rejected the remedial requirement that Respondents recognize and bargain with the Union for employees at the Florida location, irrespective of the Union's representative status among those employees.[2] Accordingly, the Court remanded the record to the Board for "further consideration of this aspect of the remedy . . ." Thereafter, the Board petitioned the Supreme Court of the United States for writ of certiorari. On June 5, 1967, the Supreme Court denied the Board's petition.[3] Subsequently, the Board granted permission to all parties to file briefs, and the Charging Party and General Counsel did so.

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[1] 153 NLRB 664.
[2] 374 F.2d 295.
[3] 387 U.S 942.

Having reconsidered our Decision and Order in the light of the Court's rejection of the bargaining order operative at the Florida location, we find that other remedial measures are proper and necessary to effectuate statutory policies at that facility. It may be said, at the outset, that the difficulty of the task of devising effective remedies in this and other cases involving the unlawful removal of a plant to a distant site stems from the Board's not having required any employer to restore its operations, reinstate discharged employees, and bargain at the original location. While such a remedy would fully redress the unfair labor practices, the Board has, instead, sought to fashion remedial alternatives calculated to lessen the employer's opportunities for realizing any immediate or future benefit from its unlawful course of conduct if it elects to continue operating at the runaway location.

Prior to our initial decision in this case, the Board's "runaway shop" remedy merely required the employer to bargain at the new location if the statutory representative could re-establish its majority status among the work force at that location. The burden placed on the union in order to be able to meet that condition prompted the Board to reconsider the conditional bargaining order. Although fully mindful of the various conflicting interests involved herein, the Board concluded that the rights of the Florida work force "should not be preferred at the expense of a bargaining order which will dissipate and remove the consequences of a deliberate violation of statutory obligations."[4] In disagreeing, the Court acknowledged that the unconditional bargaining order would be effective to prevent Respondents from achieving "their primary illegal objective, i.e., to escape bargaining,"[5] but it did not regard

[4]153 NLRB 664, at 666.
[5]374 F.2d 295, at 302.

this as sufficient "justification for a remedy which deprives Florida workers of a basic right."[6]

Therefore, the question before us on remand is whether a remedy can be adapted to the Florida operation which will preclude Respondents from achieving the fruits of their unfair labor practices, yet do so in a manner accommodating the freedom of choice of employees at that location. In our opinion, this objective may be achieved consistent with the Court's decision, by remedies affirmatively assuring Florida employees an opportunity to exercise their organizational interests in an atmosphere free from any lingering effects of their Employers' unfair labor practice history. There can be no question that the manifest opposition to collective bargaining by an employer who in the past has resorted to wholesale discharges and plant removal to defeat employee organization will not be taken lightly by employees confronted with a present opportunity to organize collectively.

Since the possibility exists that employees at the Florida location will be influenced by the Respondents' unlawful conduct, appropriate remedies are available to insure that they have an opportunity to formulate their desires with regard to representation in an atmosphere free of the fears generated by their Employers' demonstrated propensity to violate the Act. To this end we shall apply various remedies invoked by the Board to offset the effects of massive unfair labor practices in other cases where issuance of a bargaining order was denied. First, we shall order the Respondents to furnish the International Ladies' Garment Workers' Union, upon request made within 1 year, with the names and addresses of all employees at its Florida plant and to keep that list current for a 1-year

[6] Ibid.

period.[7] Second, we shall require that, upon request of the International Ladies' Garment Workers' Union made within 1 month of this Supplemental Decision, the Respondents shall immediately grant said Union and its representatives reasonable access to its bulletin boards and all places where notices are customarily posted for a period of 1 year.[8] Third, we shall order the Respondents to permit employees to have access to union organizers on plant parking lots and plant approaches during nonworking hours.[9] Finally, in accord with our long-established practice, we shall order Respondents to bargain with International Ladies' Garment Workers' Union upon proof that a majority of employees in the appropriate unit at Miami, Florida, have designated the Union as their representative.[10]

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[7]The present case is distinguishable from *Textile Workers Union v. N.L.R.B.* (*J. P. Stevens & Co.*), F.2d (C.A. 2), December 27, 1967, where the Court denied enforcement of a name and address requirement. In *Stevens*, the employer had engaged in extensive 8(a)(1), (3), and (4) violations during an initial organization campaign. The Court reasoned that a proper remedy in such context need go no further than "dissipate the fear in the atmosphere within the Company's plants generated by its antiunion campaign." However, in the runaway shop situation statutory policies will not be effectuated merely by a "change in atmosphere" at the runaway location, particularly where, as here, the Board did not require Respondent's return to its original location and the Court has refused to enforce an immediate bargaining order. As an effective remedy in these circumstances, we believe that the names-and-addresses requirement is particularly appropriate for employee-union communications at the runaway location where as a result of the unlawful move there are few if any union adherents employed. Such a provision in our affirmative Order is also necessary to diminish the offending Employers opportunity to profit from their unlawful refusal to bargain at the original location.

[8]*H. W. Elson Bottling Company*, 155 NLRB 714, 715, enfd. with modification not here material, 379 F.2d 223 (C.A. 6).

[9]*Marlene Industries Corp.*, 166 NLRB No. 58, p. 6.

[10]See, e.g., *Mount Hope Finishing Co.*, 106 NLRB 480, 501; *Industrial Fabricating, Inc.*, 119 NLRB 162, 173; *Sidele Fashions, Inc., etc.*, 133 NLRB 547, 555-556, enfd. 305 F.2d 825 (C.A. 3).

As indicated above, we view these remedial revisions as consistent with the Court's remand and, in our opinion, they will dissipate any possible extension of the coercive effects of Respondents' unfair labor practices upon the Florida employees by opening channels of communication between the Union and employees closed by Respondents' flagrant violations of the Act, and by requiring immediate resumption of the bargaining relationship upon proof of majority. Finally, to the extent that they are designed to eradicate any organizational imbalances created by the unfair labor practices and to facilitate an opportunity for the Florida workers freely to select a bargaining representative, these remedies will diminish Respondents' opportunity to achieve the benefits of their unlawful conduct.[11]

AMENDED ORDER[12]

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondents, Garwin Corporation; S'Agaro, Inc., a New York Corporation; S'Agaro, Inc., a Florida corporation; their officers, agents, successors, and assigns; and Respondents, Joseph Winkelman and Milton Mirsky, their agents, successors, and assigns, shall:

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[11]Upon a showing of cause, the Board, in the event of a change in circumstances, will reconsider the appropriateness of any segment of the Amended Order herein affected thereby.

[12]So that all of the Respondents' obligations hereunder may be contained in one instrument, we have decided to issue an Amended Order containing not only those provisions of our previous Order which we have reconsidered. but also the provisions which have already been enforced by the Court.

1. Cease and desist from:

(a) Refusing to bargain collectively, upon request, with Local 57, International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive representative of all production and maintenance, packing and shipping employees, excluding office clerical employees, guards, and supervisors employed at their Jamaica Avenue, New York, plant.

(b) Discouraging membership in the aforesaid labor organization or in any other such organization of their employees by terminating the employment of, and refusing to reinstate, any of their employees or by discriminating in any other manner in regard to their hire and tenure of employment or any other term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form, join, or assist in the above-named Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action, which it is found will effectuate the policies of the Act:

(a) Offer to all employees who were deprived of work by the removal of Respondents' New York plant immediate and full reinstatement to their former or sub-

stantially equivalent positions (with necessary traveling and moving expenses for them and their families and their household effects), without prejudice to their seniority or other rights and privileges and in accordance with the other conditions set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

(b) Make whole such employees for any loss of earnings they may have suffered as a result of the discrimination against them, as provided in the section of the Trial Examiner's Decision entitled "The Remedy."

(c) Notify the employees herein found to have been discriminated against, if presently serving in the Armed Forces of the United States, of their right to reinstatement as provided herein, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) If Respondents resume their discontinued operation in the New York City area, bargain collectively, upon request, with Local 57, International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive representative of all production and maintenance, packing and shipping employees, excluding office clerical employees, guards, and supervisors employed in such operations, and

if an agreement is reached, embody such understanding in a signed agreement. If Respondents do not resume such operations, but continue at Miami, Florida, to perform the operations formerly carried on in New York, bargain, upon request, with the International Ladies' Garment Workers' Union upon proof that a majority of employees in the appropriate unit at Miami, Florida, have designated the Union as their exclusive representative.

(f) Upon request made within 1 year of the issuance of this Decision, immediately supply the International Ladies' Garment Workers' Union a list of the names and addresses of all employees at their Miami, Florida, plant, and keep that list current for a 1-year period.

(g) Upon request, immediately grant the International Ladies' Garment Workers' Union and its representatives reasonable access, for a 1-year period, to plant bulletin boards and all places where notices to employees are customarily posted at the Miami, Florida, plant.

(h) Permit employees at the Florida plant to have unrestricted access to union organizers during non-working time on plant approaches and parking lots for a period of 1 year from the issuance date of this Decision, subject only to such reasonable and non-discriminatory regulations as Respondents may find it necessary to impose in the interest of plant efficiency and discipline, provided, however, that said regulations do not serve to thwart the employees in the exercise of the right guaranteed them herein.

(i) Send to each of the employees referred to in paragraph 2(a) above, by registered or certified mail, a letter offering reinstatement and setting forth the Respondents' election as to where they will effect such reinstatement, and include in such letter a copy of the notice attached hereto marked "Appendix."[13]

(j) Post at their plant in Miami, Florida, copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondents' representative, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

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[13]In the event that this Amended Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for a "Supplemental Decision and Order," the words "a Decree of the United States Court of Appeals, Enforcing an Amended Order."

[14]However, if Respondents elect to resume in the New York area their former New York operations, such notice shall be posted at such new location.

(k) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Decision, what steps Respondents have taken to comply herewith.

Dated, Washington, D. C. Feb. 21, 1968

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

Howard Jenkins, Jr., Member

Sam Zagoria, Member

NATIONAL LABOR
RELATIONS BOARD

(SEAL)